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IN THE
Supreme Court of the United States.

No. 608. October Term, 1937.

LINCOLN ENGINEERING CO. OF ILLINOIS,
Defendant-Petitioner,

v.

STEWART-WARNER CORPORATION,
Plaintiff-Respondent.

PETITIONER'S REPLY BRIEF.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent's brief represents such a palpable attempt to evade and becloud the issues by feigning non-existent factual disputes and by discussing generalities on non-issues, as to call for a reply.

NOMENCLATURE.

As a part of its evasive strategy, respondent has attempted to becloud and confuse the issues by criticizing our brief as misrepresentative in our statement of the case. This criticism is presented by respondent as a pretext for its own re-statement of the case;—which respondent's brief does by merely quoting at length the findings of fact and conclusions of law adopted by the trial court. As to the authorship of these findings and conclusions, see pages 17-21 herein.

The *only* thing to which respondent was able to address any criticism, however, was purely a matter of nomenclature. The nomenclature which respondent criticizes in our brief, is the same nomenclature given by the prior-art and by respondent's own earlier patents including respondent's patent which was adjudicated in this Court (in *Rogers v. Alemite*, 298 U. S. 415) as well as by **findings of fact**, in the case at bar, which were **written by respondent's counsel** and adopted by the trial Court.

Thus, respondent's **only** criticism of our brief, and the thing which respondent calls "typical" of our entire statement of the case, is merely the fact that we call the "lubricant-receiving nipple" a **grease-cup**, and that we call the "lubricant compressor" a **pump**.

Respondent's own earlier Gullborg patent 1,307,734 (R pp 534, 539) calls the "lubricant receiving device" a *grease-cup* (and also calls the same device by other names), and calls the "compressor" a *pump*. Gullborg's pump is indistinguishable from Butler's pump.

Respondent has not attempted to show either by reference to the record or in argument that what it now calls the "nipple" is not the same device which in its Gullborg patent it called the grease-cup. Respondent obviously could show no distinction, because in its commercial catalogs (Plf. Exh. 21-B; pages 3 and 13) it calls both types of grease-cups, that is, both the bayonet type grease-cup of its earlier Gullborg patent, as well as the headed grease-cup by the same name, to wit, a "fitting".

Respondent has not attempted to show that Butler's compressor is anything but a pump and indeed an old pump. Respondent's brief (page 3) says:

"One of the elements of the combination claimed in the patent in suit is a 'lubricant compressor' (see claims 1

and 2, R. p. 470). Counsel for petitioner choose to re-name this element as a 'pump' "

Respondent's brief then continues:

"No lubricant compressor prior to the advent of Butler's invention ever performed the function of Butler's compressor."

Beyond making this astounding statement, respondent's brief does not anywhere give any support for this statement. Obviously there is no support for such statement in the record nor can any be evolved in argument, because Butler's pump is indistinguishable in structure and function from the pump of respondent's own prior Gullborg patent (R p 534) and of respondent's own prior Winkley patent (R p 526). Moreover, the term "lubricant compressor" has been interpreted by respondent to include not only those pumps shown in these patents and in the Butler patent but also the entire field of pumps including those operated by compressed-air motors as well as those operated by electric motors (kinds of pumps not anywhere disclosed in the Butler patent).

Respondent spends many pages of its brief on the proposition that the Butler headed grease cup and pump are proper elements of a claim defining what Butler invented. Respondent's utter disregard of propriety in reaching beyond the invention with claims is well pointed at page 3 of its brief, quoted above.

Respondent's feigned dispute as to nomenclature is further without point because the decision of the Court of Appeals for the Seventh Circuit in the case at bar has clearly pointed out that both the combination as a whole is old and that the headed "nipple" or grease-cup (the only defendant's device now accused in the case at bar) is also old.

The Court of Appeals for the Seventh Circuit in the case at bar said:

“the patent in issue here deals with some of the **same old elements of combination** * as were described in the Gullborg patent, the validity and infringement of which were the subject matter of the Battick vs. Hollingshead opinion.

“The Gullborg patent had been the subject of much litigation, as pointed out in the opinion, and it dealt, as here, with (1) a type of pin fitting, (2) a grease-gun, (3) a connecting hose, and (4) a type of coupler.”

(91 Fed 2d 757, 761, R p 633.)

The Court of Appeals for the Seventh Circuit in the case at bar also recognized (what the record clearly shows) that the headed grease-cup or nipple accused in the case at bar and included in Butler's patent claim was also old and not patentable; the Court saying in its opinion:

“In the instant case, it is conceded that the **headed nipple was not patented**. More, it is **not patentable**. It will be assumed that it was **old**”.

(91 Fed. 2d 757, 763, R p 637.)

This conclusion was inescapable and was forced upon the Court of Appeals for the Seventh Circuit in the case at bar by the long series of headed grease-cups and analogous headed fluid-receiving devices (called by many names), of which typical examples appear in our main brief, on the chart facing page 16.

We submit, in view of respondent's obvious intention also to reach, via “contributory” infringements, the ob-

* In quotations throughout this brief, emphasis is ours unless otherwise noted.

viously old pumps, as well as the obviously old headed grease-cups, that this and like claims should once and for all be stamped as invalid. Such claims menace the common-law rights of the public generally and should be abolished as was done in the following cases:

- Heald v. Rice, 104 U. S. 737, 755;
- Underwood v. Gerber, 149 U. S. 224, 227;
- General Electric Co. v. Ohio Brass Co., 277 Fed 917 (C. C. A. 3);
- Langen v. Warren Axe & Tool Co., 184 Fed 720 (C. C. A. 3);
- In re Ratican, 36 App. D. C. 95;
- In re Germantown Trust Co., 57 Fed 2d 365 (U. S. Ct. of Customs & Patent Appeals);
- Kodell Electric v. Warren Telechron, 62 Fed 2d 692 (C. C. A. 6);
- Alemite Corp. v. Lubrair Corp., 62 Fed 2d 899 (C. C. A. 1).

THE ISSUES DO NOT TURN ON "EXPERT TESTIMONY."

Respondent's brief criticizes our brief on the score that we have not sufficiently referenced our brief to the testimony, particularly the "expert testimony" of respondent's opinion witness.

While the so-called "expert testimony" of lawyer (R p 49) Lynn A. Williams, Jr., in the case at bar when interrogated by his father, Lynn A. Williams, Sr., was nothing but an echo of counsel's argumentative position, yet the documentary evidence,* in the case at bar so completely

* Our statement (pages 5-43 of our main brief) contains over seventy references to documents in the Record.

establishes the essential facts that it was not necessary for us to refer to such "expert testimony." This type of testimony has long ago and aptly been condemned by the Court of Appeals for the Second Circuit in *New York Central v. Henney*, 207 Fed. 78, 81.

Even this type of "expert testimony" cannot explain away the facts shown on the face of the prior-art patents, as recognized by the Court of Appeals in the case at bar in its opinion, that the combination of the four devices, to wit, grease-cup (nipple), pump (grease-gun or compressor), hose and coupler (nozzle) was old, and that headed grease-cups or nipples were also old prior to Butler.

Thus, what Butler's astute patent solicitors have done and what the respondent's "lawyer-expert" has done in the case at bar is to describe the coupler (in the descriptive portion of the Butler specification) as five elements alongside of a pump and a grease-cup, thereby to spell out of this commingling of five *coupler-composing* elements, and two separate and independent devices, a so-called "combination" of seven elements, of which the pump and grease-cup are two and of which the five *coupler-composing* elements are the other five.

Respondent's "lawyer-expert" has, for example, tried to obscure the fact that the pump, coupler and grease-cup are three independent devices, by calling them *seven elements*. He did this by splitting the coupler into five elements whose combination forms Butler's invention, if Butler made any invention. To these five *coupler-composing* elements this "lawyer-expert" of respondent added a complete independent pump and a complete independent grease-cup, both outside the invention, if any. This is how he obtained the total of seven elements. As a matter of fact, the coupler is one device, the pump is a second device,

and the grease-cup is a third device. The pump and the grease-cup are separate devices which lie outside of Butler's invention.

RESPONDENT CAN NOT MONOPOLIZE OLD GREASE-CUPS (OR OLD PUMPS) MERELY BECAUSE SOME OF THE INTERNAL PARTS OF RESPONDENT'S ALLEGEDLY BUTLER-IMPROVED COUPLER MOVE, WHEN THE COUPLER IS APPLIED TO (OR REMOVED FROM) THE OLD GREASE-CUP.

This Court has decided just this, in the *Rogers v. Alemite* case quoted below.

Much of respondent's brief simply boil down to an argument of the dubious proposition that the headed characteristic of the Butler grease-cup causes coaction with the coupler to effect an automatic sealing against leakage and so-called "cocking"* of the coupler by the grease-cup. It is upon this basis that respondent also, at the bottom of page 190 of its brief, challenges petitioner to discuss the following italicized phrase in a quotation from the *Hollingshead* and *Rogers* case, to wit:

"The question then is whether, by this method, the patentee, by improving one element of an old combination *whose construction and operation is otherwise unchanged*, may, in effect, repatent the old combination by reclaiming it with the improved element substituted for the old element." (298 U. S. 415, 425.)

We accept this challenge simply by noting that in the *Rogers v. Alemite* case there was a similar automatic sealing action against leakage and a similar "cocking" action. This Court said, at 298 U. S. 415, 418, that Gullborg

* This word "cocking" is not in the Butler patent, and is a mere catch-phrase evolved by respondent's counsel.

"conceived the idea of placing a movable perforated cup-shaped disc or washer in the barrel of the coupler held by a spring against the orifice of the coupler. The intended operation of his device was that when the coupler had been fastened over the pin fitting the spring should press the washer against the ball in the pin fitting so that the tube in the fitting would be open to receive the grease, and, upon application of pressure to the grease, the washer would thereby be firmly pressed against the opening of the pin fitting, thus causing a tight union and preventing exudation of grease. His specification asserts that the invention makes possible the injection of grease under very high pressure. The design of the bayonet slots is such that, in uncoupling, the coupling member of the gun will at first be moved slightly forward on the pin fitting thus backing up the perforated washer in the bore of the coupler. As the two parts are then drawn apart by the retraction of the coupler, the cup-shaped washer will be forced forward by the spring. This will cause a vacuum beyond the washer and the air rushing in through the perforation in the washer will draw with it any grease which would otherwise adhere about the orifices of the fitting and the coupling."

From the above it is clear that Gullborg's perforated washer in the barrel of the coupler was similarly "cocked" (pressed back against the spring) when the Gullborg coupler met an old pin-fitting type or grease-cup, so that when the Gullborg coupler was pulled away from said grease-cup, the Gullborg washer was forced forward by the spring to suck the grease away from the old grease-cup.

Thus, this Court has already held in the *Rogers v. Alemite* case, that the movement * of one or more internal

* which movement respondent at long last calls "cocking".

elements of the coupler, when the coupler is *used with* an old grease-cup, does **not** entitle the patentee to monopolize old pumps or old grease-cups.

Furthermore, this Court was correct in its decision in *Rogers v. Alemite* in holding that the invention was merely in the coupler, because it was the parts in the coupler that were organized and positioned to provide a new coupler, and the grease-cup had nothing to do with it, except to provide the old environment in which the invention (the coupler) was to be *used*. Likewise, we submit that we are correct in the present case in our position that when Butler, like Gullborg, positions or arranges the internal parts in the coupler, per se, so as to move ("cock") when *used with* the old environmental grease-cup, that this case is on all fours with the *Rogers v. Alemite* case and that this Court should correctly hold that Butler's invention is also restricted to the coupler and does not extend to the old pump nor to the old grease-cup.

This Court's statement in the *Rogers v. Alemite* case at 298 U. S. 415, 419, that,

"While Gullborg's invention was confined to an improvement in the hose coupler, which is but one element in the old and well understood combination of a compression chamber or pump, a hose, a hose-coupler, and a grease cup or fitting connected to the bearing to be lubricated, his claims are not for the improvement as such but all are for a combination of the old elements with the improved form of coupler."

applies with equal force to Butler's invention. To show that this Court's statement applies to the present case, it is only necessary to substitute the name Butler for the name Gullborg in the above quotation.

Another point that emphasizes the similarity between this case and *Rogers v. Alemite* is that even the same pressure release, referred to at 298 U. S. 415, 420, as being necessary for the Gullborg sealing washer to perform its function of creating a suction when the pin (of the grease-cup) and coupler are disengaged, is paralleled by the requirement for pressure release referred to by respondent at page 29 of its brief as being necessary to permit the head of the nipple to wedge its way through the jaws 40 to bring about the so-called "cocking" upon release.

Thus, it will be seen that what this Court refers to as the "*old combination whose construction and operation is otherwise unchanged*" (see 298 U. S. 415, 425), simply means that the broad combination (which was already known) of a pump, coupler and grease-cup, and that Butler, like Gullborg, simply improved the coupler, and that Butler, like Gullborg, is not entitled to monopolize the old pump or old grease-cup. Certainly, we may say that the Butler combination of pump, coupler and grease-cup has a construction and operation which is unchanged, except as to the changes in the coupler *per se*, in the same sense Gullborg's combination of pump, coupler and grease-cup had a construction and operation which was unchanged, except as to the changes in the coupler *per se*.

Butler has done no more for the old combination of pump, coupler and grease-cup than did Gullborg, that is, Butler merely improved the coupler and is not entitled to monopolize the pump or grease-cup.

Respondent's catchword "cocking" has no real significance whatever. This catchword is merely conjured up by respondent's counsel to mystify the obvious. What respondent is doing is merely saying in another and somewhat dramatic way, that when a coupler *meets* a grease-cup or is

subsequently disunited from the grease-cup, the internal parts of the coupler go through all their motions and functions as determined by the coupler design. This is true of every coupler. It is true of the old Gullborg coupler. It is likewise true of the Seng coupler and the Newton coupler, both shown on the chart facing page 26 of our main brief. Thus, whatever motions and functions the internal parts and mechanisms of a coupler have, as determined by the coupler design, they go through these motions and perform these functions when *meeting* a grease-cup, "fitting" or "nipple".

Respondent's catchword has no real significance in glorifying the old headed grease-cup (when meeting a Butler coupler) as distinguished from some other type of old grease-cup. This is perhaps best demonstrated by the fact that in its suit against Jiffy, decided by the 8th Circuit, respondent asserted claim 1 of the Butler patent against a Jiffy coupler when *used with* respondent's own old Alemite "pin-fitting" type grease-cup of its now-expired Gullborg patent (see the top-center of the chart facing page 26 of our main brief). The old Alemite pin-fitting (R. p. 534) was not a headed grease-cup but a "bayonet" type grease-cup, and the Jiffy coupler was obviously "cocked" * when *meeting* the old "non-headed" bayonet-type grease-cup;—that is, its internal elements went through their intended motions and performed their intended functions when *meeting* the non-headed grease-cup. The bayonet pins on this bayonet-type grease-cup had no function with the Jiffy coupler. The Jiffy coupler merely gripped the cylindrical free end of the Alemite bayonet-type grease-cup beyond the bayonet pin.

*in the same sense as that old "pin-fitting" type grease-cup has been "cocking" the internal elements of the old Gullborg coupler for the past twenty years.

We thus see that the limitation in claim 2 to a headed fitting does not provide any ~~unique~~ feature by which any unique so-called "cocking" feature is brought about. In fact, respondent was pursuing the Jiffy Company under claim 1, which calls for a fitting without limitation to any headed characteristics.

Respondent's "cocking" argument boils down to this:— the Butler coupler, like most prior couplers, has some movement of internal parts when it *meets* a grease-cup or "fit-when it *leaves* the grease-cup. This Court, in the Hollingshead and Rogers decision quoted above, describes just such an action as occurring when the Gullborg coupler *meets* or *leaves* a grease-cup. This Court held that such circumstances do not entitle the patent owner to monopolize the pump or grease-cup.

THIS COURT'S DECISIONS ON CONTRIBUTORY INFRINGEMENT HARMONIZE WITH EACH OTHER AND WITH OUR POSITION AT BAR.

At pages 85 to 179, respondent's brief attempts to show that our position at bar is at variance with the relevant decisions of this Court.

We refrain from repeating here our detailed arguments at pages 57-78 of our main brief, showing that our position at bar is exactly in harmony with each of this Court's four leading and latest relevant decisions, namely, the Leeds, Carbice, Leitch and Rogers cases.*

* Leeds & Catlin Company v. Victor Talking Machine Company, 213 U. S. 301 and 325;

Carbice Corporation of America v. American Patents Development Corporation, et al., 283 U. S. 27;

Leitch Manufacturing Company, Inc., v. The Barber Company, et al., 302 U. S. ; 58 S. Ct. 288; and

Rogers et al. v. Alemite Corporation, 298 U. S. 415.

To the above four decisions, respondent's brief (pages 82-85) adds two of this Court's earlier decisions. We now discuss these two, briefly, and show that they are completely in harmony with the four decisions noted above:

American Cotton Tie Co. v. Simmons, 106 U. S. 89:

In this suit, the patents were for a cotton bale tie. The defendant sold the tie. Only the bale of cotton and the press were needed to produce the result set forth in the patent.

At 106 U. S. 89, 94, the Court said, referring to the defendants:

"They sell the tie having the capacity of use in the manner described (in the patents), and intended to be so used. Only the bale of cotton and the press are needed to produce the result set forth in the specifications of the patents, and without the bale of cotton and the press the tie would not be made or sold. The slot through the end bar of the buckle in the Cook patent is of no practical use apart from the band and the bale of cotton, and the same thing is true of the link of the McComb patent with its arrow-shaped aperture; . . ."
"We do not decide that they are liable as infringers of either of the three patents merely because they have sold the buckle considered apart from the band or from the entire structure as a tie." (106 U. S. 89, 95.)

Thus, in this cotton tie case, the defendants appropriated the tie, which was the patentees' advance over the prior art.

On the other hand, in the case at bar, the petitioner is not making any coupler complained of, but is making an *old* grease-cup for use, *inter alia*, with respondent's old pump and allegedly Butler-improved coupler.

Thus, in this cotton tie case, the common denominator of this Court's decisions on contributory infringement (page 57 of our main brief) is again found, namely, that one who makes, sells or supplies the thing which the patentee really invented, is a contributory infringer, but the doctrine of contributory infringement cannot be abused to monopolize an old device which the patentee may have included in his claim along with the patentee's assertedly improved device.

Woodward Co. v. Hurd, et al., 232 U. S. 428:

Here the patent was on a rubber-tired wheel. The wheel was old. The tire was new.

The defendant sold all the parts essential to the making of the tire. This Court said (232 U. S. 428, 429):

"The case as stated concerns the liability of the defendant as a contributory infringer upon the assumption that in the manner described it assembles the various elements **essential to the making of the Grant tire** and sells them with the intent and purpose that they shall be so combined."

This decision distinguishes the infringement by making tire, from non-infringement by making the rubber element of the tire.

Thus, in this Woodward case, the common denominator of this Court's decisions on contributory infringement (page 57 of our main brief) is again found, namely, that one who makes, sells or supplies the thing which the patentee really invented (the tire), is a contributory infringer.

Again, the doctrine of contributory infringement cannot be used to monopolize something (the rubber element) which the patentee did not invent, even though it was included in his claim.

At page 100, respondent's brief takes the position that the Rogers v. Alemite case was based upon the question of double patenting, so far as Gullborg claims 14 and 15 are concerned, and infers that this distinguishes that case from the present case. This is far from true.

In the first place the case at bar is precisely parallel to the case before this Court on Gullborg claims 1 to 4 and 10, where, as here, the claim was drawn to a so-called "combination" of an assertedly improved coupler (specifically defined) and an old pump and an old grease-cup (the latter two devices were included in the claim only in broad and all-inclusive language).

In this connection respondent does not discuss this Court's decision on Gullborg's claims 1 to 4 and 10.

Moreover, even considering respondent's argument with respect to Gullborg claims 14 and 15, a person will not be permitted to *patent de novo* an old combination, as Butler does, any more than he will be permitted to *repatent* an old combination. The question as to whether the grease-cup, per se, has been separately patented in some other unexpired patent (not in suit), or whether such grease-cup was merely an old grease-cup of the prior art, is purely incidental and immaterial.

In any event, respondent's argument is *not* directed to Gullborg claims 1-10, which are analogous to the claim at bar.

However if any further parallelism is wanted between the respondent's position in its earlier Rogers and Hollingshead suits recently decided by this Court (298 U. S. 415), insofar as concerns the immaterial existence of a separate patent on the grease-cup, per se, we believe it appropriate to call attention to the fact that respondent in other simultaneous litigation is asserting its earlier Zerk patent

16 "Retrial" of Leeds and Catlin—Answer to Questions

1,619,455 which covers a grease-cup, per se, against the very same grease-cup as is accused in the case at bar.

Stewart-Warner Corp. v. V. L. Jacobs, U. S. Dist. Court, N. Dist. of Ill., E. Div. Equity No. 15,820, filed Oct. 2, 1937.

Respondent Attempts to Re-Try Leeds & Catlin.

This Court's decision in the case of Leeds & Catlin v. Victor speaks for itself. We have quoted the pertinent parts of this Court's decision from the Leeds & Catlin case.

Respondent's attempt (pages 165-181 of its brief) to go back of this Court's decision in the Leeds & Catlin case and re-try (in effect) the Leeds & Catlin case, is inappropriate and impertinent for two reasons;—one, because the only possible significance of that decision (or any decision) as a precedent, is the announcement of the law based on the facts found by the Court, and secondly, it is entirely impertinent for respondent to attempt to show that the facts announced in this Court's decision in the Leeds & Catlin case are at variance with the facts shown in or out of the record of that case.

If a re-trial of the Leeds & Catlin facts were proper or useful now, such re-trial would show that this Court's recital of the facts, in this Court's Leeds & Catlin decision, is correct. See pages 58-59 of our main brief.

ANSWER TO RESPONDENT'S FOUR QUESTIONS.

Respondent's four questions at page 68 of its brief may all be answered and applied to the Butler patent, if we assume, for the moment, that Butler claim 1 is valid, by saying that if Jiffy had sold a Butler coupler, Jiffy would have been a contributory infringer of Butler claim 1. This is because the doctrine of contributory infringement

can be used only to reach one who supplies or does the thing which the patentee really contributed to the art.

On the contrary, there can be no contributory infringement in the case at bar, because the petitioner is not even charged with having appropriated the thing (the coupler) which Butler contributed to the art.

By the same token, contributory infringement might have existed in the case at bar, if respondent had retained petitioner's own coupler upon which this suit was originally based, and if such coupler had been shown to be a Butler coupler. The respondent chose to throw petitioner's coupler out of this case. The reason for this must be obvious. It had no confidence in its ability to show that petitioner's coupler, upon which the suit was originally based, was in reality a Butler coupler.

WHO PREPARED THE FINDINGS AND CONCLUSIONS?

Respondent's brief rests heavily upon respondent's representation that the findings of fact and conclusions of law were prepared by the trial judge himself.

In our brief heretofore filed, we did *not* in any way discuss the authorship of the trial court's findings and conclusions because such authorship is ordinarily immaterial—it being a well settled principle that an appellate tribunal is not bound by the findings and conclusions of the trial court.*

We know of no rule against the trial judge adopting the findings of fact and conclusions of law proposed by either party, nor do we know of any rule against the trial court writing an opinion by collecting and condensing excerpts from counsel's brief. Indeed, many trial courts very prop-

**Process Engineers v. Container Corp.*, 70 F. (2d) 487, 489.

erly request each side to submit findings and conclusions which the court may adopt.

We are filing in this Court copies of plaintiff's proposed findings and conclusions and an accompanying letter from Mr. Lynn A. Williams (respondent's counsel) dated June 29, 1936, to His Honor Judge Lindley.

We compare the trial court's findings and conclusions with those which had been submitted to the trial court by Mr. Lynn A. Williams, as follows:

Table of Concordance.

Between

respondent's findings of fact and conclusions of law submitted to the trial judge some time prior to June 29, 1936,

and

the trial court's findings of fact and conclusions of law filed July 15, 1936 (R. p. 431).

Plaintiff-

respondent's
proposed findings
of fact and con-
clusions of law

Trial court's
findings of fact
and conclu-
sions of law

(Findings of Fact)

1 + 2	1	Substantially the same except that the Court changed "Delaware to "Virginia".
3	2	<i>Verbatim.</i>
4	3	<i>Verbatim</i> , except that the Court added "and" and omitted "and at the expense of the".
5	4	<i>Verbatim</i> , except that the Court added "or shouldered" and substituted "lubricant-right" for "lubricant-tight".

Plaintiff-
respondent's
proposed findings
of fact and con-
clusions of law

Trial court's
findings of fact
and conclu-
sions of law

(Findings of Fact)

- | | | |
|---------|---------|---|
| 6..... | 5..... | <i>Verbatim</i> , except that the Court added "In practical operation". |
| 7..... | 6..... | <i>Verbatim</i> , except that the Court omitted "gun or", and "gun and the", and added "compressor". |
| 8..... | 7..... | <i>Verbatim</i> , except that the Court added "in order to prevent leakage of lubricant". |
| 9..... | 8..... | <i>Verbatim</i> , except that the Court added "the" and "combination". |
| 10..... | 9..... | <i>Verbatim</i> , except that the Court added "51". |
| 11..... | 10..... | <i>Verbatim</i> . |
| 12..... | 11..... | <i>Verbatim</i> , except that the Court omitted "Clyde B." and "patent". |
| 13..... | 12..... | <i>Verbatim</i> , except that the Court omitted "in any form whatsoever" and transposed "automatically" and "effected". |
| 14..... | 13..... | <i>Verbatim</i> . |
| 15..... | 14..... | <i>Verbatim</i> . |
| 16..... | 15..... | <i>Verbatim</i> . |
| 17..... | 16..... | <i>Verbatim</i> . |
| 18..... | 17..... | <i>Verbatim</i> . |
| 19..... | 18..... | <i>Verbatim</i> , except that the Court added "Under this equipment", and omitted "car". |

Plaintiff-
respondent's
proposed findings
of fact and con-
clusions of law

Trial court's
findings of fact
and conclu-
sions of law

(Findings of Fact)

20.....	19.....	<i>Verbatim.</i>
21.....	20.....	<i>Verbatim.</i>
22.....	21.....	<i>Verbatim.</i>
23.....	22.....	<i>Verbatim</i> , except that the Court omitted "(St. Louis)", and substituted "fitting" for "fittings".
24.....	23.....	<i>Verbatim</i> , except that the Court substituted "at least as early as" for "in".
25.....	24.....	<i>Verbatim</i> , except that the Court substituted "of" for "or".
26.....	25.....	<i>Verbatim.</i>
27.....	26.....	<i>Verbatim.</i>
28.....	27.....	<i>Verbatim.</i>
29.....	28.....	<i>Verbatim.</i>
30.....	29.....	<i>Verbatim.</i>
31.....	30.....	<i>Verbatim</i> , except that the Court omitted "(St. Louis)".
32.....	31.....	<i>Verbatim.</i>
33.....	32.....	<i>Verbatim</i> , except that the Court added "or shoulder or head".
34.....	33.....	<i>Verbatim.</i>
35.....	34.....	<i>Verbatim.</i>
36.....	35.....	<i>Verbatim.</i>
37.....	36.....	<i>Verbatim</i> , except that the Court omitted "Mr. A. P. Fox".

Plaintiff-
respondent's
proposed findings
of fact and con-
clusions of law

Trial court's
findings of fact
and conclu-
sions of law

(Findings of Fact)

38.....	37..... <i>Verbatim.</i>
39.....	38..... <i>Verbatim.</i>
40.....	39..... <i>Verbatim</i> , except that the Court substituted "not" for "but".
41.....	40..... <i>Verbatim.</i>
42.....	41..... <i>Verbatim.</i>

(Conclusions of Law)

43.....	1..... <i>Verbatim.</i>
44.....	2..... <i>Verbatim.</i>
45.....	3..... <i>Verbatim.</i>
46.....	4..... <i>Verbatim.</i>
47.....	5..... <i>Verbatim.</i>
48.....	6..... <i>Verbatim.</i>
49.....	7..... <i>Verbatim.</i>
50.....	8..... <i>Verbatim.</i>
51.....	9..... <i>Verbatim.</i>
52.....	10..... <i>Verbatim.</i>
53.....	11..... <i>Verbatim.</i>

We do not question that the trial court may have expended a great deal of time and effort and had given a great deal of consideration to the findings of fact and conclusions of law prepared by respondent's counsel before adopting and making such findings and conclusions its own. What we do object to, is respondent's disproportionate emphasis of a matter in which respondent clearly rests upon its own misrepresentation of an otherwise immaterial fact.

**PETITIONER'S GREASE-CUPS AT BAR HAVE
OTHER USES, NOT COMPLAINED OF HEREIN.**

The record shows conclusively that petitioner's grease-cups at bar have other uses, not complained of in this suit, such as with petitioner's N-6 nozzle (Defendant's Exhibit A-44). See for example, R. pp. 87-89, 93-98. See also the chart at R. p. 427, which illustrates and describes the Lincoln "KLEENSEAL Nozzles" and their conjoint use with petitioner's grease-cups at bar. The chart at R. 423 shows how the petitioner's grease-cups at bar have a use with respondent's Zerk nozzles. Respondent makes no complaint whatever that such uses infringe the Butler patent.

At R. pp. 397-401, 411, 415 and 427, petitioner's lubrication system composed of co-operative Kleenseal nozzles and fittings is illustrated. Respondent makes no complaint whatever that such uses infringe the Butler patent.

Respondent (page 52 of its brief) describes these other uses as "innocent", but attempts to belittle them.

The fact remains, however, that these other uses do exist and have always existed as long as petitioner's grease-cups at bar have existed.

As pointed out on pages 8, 9, and 10 of our main brief, petitioner sells not only the grease-cups to which respondent has at last confined the present suit, but petitioner (just like respondent) also sells an extensive line of pumps* and grease-delivery couplers or nozzles used on the discharge hoses or conduits of the pumps, for making the temporary fluid-tight connection between the pumps and petitioner's

*Some small, some large, some manually operated, some operated by compressed-air motors, and some operated by electric motors.

grease-cups at bar (as well as other grease-cups on the market).

As also heretofore pointed out in our main brief (pages 8 to 10), respondent brought this suit, at the outset, **solely** on the basis of a coupler sold by petitioner;—charging that such coupler constituted “contributory” infringement of the Butler patent here in suit.

Through a series of steps†, respondent completely changed the basis of its present suit by withdrawing the coupler upon which the suit was solely based and then resting its suit solely upon petitioner’s grease-cup later brought into this suit. Respondent’s action is capable of only one interpretation, and that is, that respondent had no confidence in its charge of infringement first levelled at petitioner’s coupler. Respondent had no confidence in its ability to convince any court that petitioner’s coupler was the Butler coupler.

As hereinabove pointed out above (and also on pages 8-10 of our main brief), petitioner also sells other * grease-delivery couplers or nozzles, known as the Lincoln “KLEENSEAL Nozzle”.** These are also for use with petitioner’s grease-cups at bar, and are useful with other grease-cups as well. These nozzles have never been complained of at any time under this Butler patent.

†See pages 8 to 10 of our main brief.

*That is, other than the coupler or nozzle upon which this suit was originally based.

** These are of another kind, to wit, of the “push-contact” type.

Respondent ASSERTS That Petitioner's Grease-cups at Bar Have Other Uses, Not Complained of Here.

Respondent would have this Court believe that petitioner's grease-cups at bar have no use save with respondent's allegedly Butler-improved couplers. The record cited above shows that the opposite is true. Furthermore, respondent's own litigation which it is waging in various courts on other so-called "combination" patents confirms this fact that the petitioner's grease-cups at bar have other commercial uses than the *use* herein complained of. Respondent's litigations which we cite below, contain public allegations and admissions by this respondent, or by others acting under its direction, that petitioner's grease-cups at bar **are** adapted and intended and **are** in fact used with couplers other than respondent's couplers at bar.

Respondent has recognized this fact by charging infringement against such *conjoint use* of petitioner's grease-cups *with* other couplers or nozzles, in suits sponsored and maintained by respondent under the more recent Boker patent 1,802,700 (R pp 673-6). The Boker patent 1,802,700 (just like the Butler patent in suit, and just like claims 1 to 10 of the Gullborg patent, 299 U. S. 415), is based upon an alleged improvement in a grease-delivery coupler or "nozzle", but again claims a so-called "*combination*" of the assertedly improved grease-delivery coupler or "nozzle" with an old grease-cup. (91 F. (2d) 763; R p. 673.)

Respondent's Nine Min-A-Max Suits.

Thus, in each of the following "Min-A-Max" suits", respondent is asserting that

petitioner's herein-accused grease-cup or so-called Lincoln KLEENSEAL fitting, or

that

respondent's own similar grease-cup known as the Alemite HYDRAULIC fitting, or

that

respondent's own earlier Zerk fitting of Zerk patent 1,475,980 (R pp 546-55)

is the grease-cup of the Boker patent 1,802,700 (R p. 673) when used with petitioner's own (herein unaccused) coupler or so-called "KLEENSEAL Nozzle", or when used conjointly with grease-delivery "push-contact" nozzles (couplers) of others:—

- 1) **Min-A-Max v. Lincoln Engineering Co. and Smith & Gregory Co.**, Dist. Court, S. Div., N. Y. (At Law 66-363).
- 2) **Min-A-Max v. Lincoln Engineering Co. and Strehlinger**, Dist. Court, E. Dist. Mich., S. Div. (Equity No. 8196).
- 3) **Stewart-Warner Corp. and Min-A-Max v. Scharoun et al**, Dist. Court, N. Dist., N. Y., Equity No. 2893 (decision reported at 32 U. S. P. Q. 499, but not reported in the Federal Reporter System).

*Respondent's connection with Min-A-Max is demonstrated by our discussion at page 27 herein and in Appendix I hereto.

- 4) **Stewart-Warner Corp. and Min-A-Max v. The Norlipp Co.**, Dist. Court, N. Dist., Ill., E. Div., Equity No. 14,362.
- 5) **Stewart-Warner Corp. and Min-A-Max v. G. C. Smith**, Dist. Court, S. Dist., Calif. (Los Angeles), Equity No. 842-Y.
- 6) **Min-A-Max v. Edwin Sundholm**, Dist. Court, N. Dist. Iowa, W. Div. (Equity No. 437).
- 7) **Min-A-Max v. Red Brown Patch Co.**, Dist. Court, S. Dist., N. Y. (Equity No. 85-7).
- 8) **Min-A-Max v. J. H. Lustgarten**, Dist. Court, S. Dist., N. Y. (Equity No. 85/66).
- 9) **Min-A-Max v. Pacific Screw Corp.**, Dist. Court, S. Dist., Calif. (Equity No. 11,658).

Min-A-Max suits numbered 1 and 2 above specifically charge infringement of the Boker patent by the *conjoint use* of petitioner's herein accused grease-cup with petitioner's herein *unaccused* grease-delivery KLEENSEAL Nozzle" (coupler).

Facing this page is a reproduction of plaintiff's Exhibit A attached to and forming a part of the Complaint in "Min-A-Max suit" No. 1 above;—being, inter alia, a pictorial illustration and description of

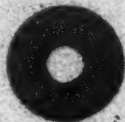
petitioner's herein accused grease-cup (Lincoln "KLEENSEAL Fitting") and
petitioner's herein *unaccused* coupler (Lincoln "KLEENSEAL Nozzle"),

which are charged to infringe Boker patent 1,802,700 because *conjointly used*.

In "Min-A-Max suits" numbered 3 and 7 above, infringement of the Boker patent is charged (inter alia) by

This is Plaintiff's Exhibit A, attached to the complaint in Min-A-Max * v. Smith & Gregory, Inc. and Lincoln Engineering Co.

Form 19
10M 4-36



NOZZLE ASSEMBLY No. 5813

LINCOLN KLEENSEAL SYSTEMS

FOR HIGH PRESSURE LUBRICATION



The Nozzle furnished attached to this equipment is the Patented Lincoln Kleenseal Nozzle Type N6 designed for quick centering on KLEENSEAL Fittings and permits angling the nozzle on the fitting without grease leakage.



The Type N6 KLEENSEAL Nozzle can be used effectively on competitive High Pressure Fittings having ball shaped heads which have sufficient clearance under the head to angle the nozzle.



For quick centering on old style Push Type Fittings, without ball head, an auxiliary Nozzle Body 8000 is provided that is interchangeable on the Adapter 1000, by means of finger tight thread. A Nozzle Body 8000 is furnished wired to this tag.

LINCOLN ENGINEERING COMPANY

ST. LOUIS, MO. " DETROIT, MICHIGAN

(over)

*Respondent's connection with Min-A-Max is demonstrated at pages 25 to 27 herein and in Appendix I.

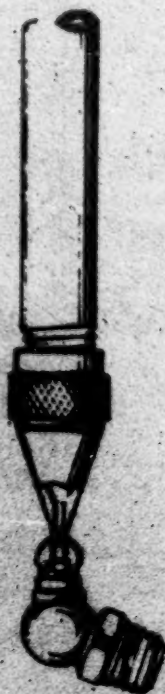
This is a photographic reproduction of Plaintiff's Exhibit A annexed to the Bill of Complaint in *Min-A-Max v. Red Brown Patch Co.*



showing that petitioner's herein accused grease-cup (Lincoln "KLEENSEAL fitting") is charged by respondent* (in *Min-A-Max v. Red Brown Patch Co.*) to be used with "push contact" nozzles of others allegedly in accordance with the nozzle of the Boker patent.



"Push-contact" type Grease-delivery nozzles of others



Petitioner's herein-accused grease-cup (Lincoln "KLEENSEAL fittings")

*Respondent's connection with *Min-A-Max* is demonstrated at pages 25 to 27 herein and in Appendix L.

the *conjoint use* of petitioner's herein accused grease-cup with grease-delivery "push-contact" nozzles of others. We attach hereto, facing this page, a photographic reproduction of Plaintiff's Exhibit A annexed to the Bill of Complaint in Min-A-Max suit No. 7 above, portraying the therein accused devices and showing petitioner's herein accused grease-cup in *conjoint use* with a "push-contact" couplers or nozzle of another.

The respondent, Stewart-Warner Corporation, has not made itself a party to each of the above identified suits but only in three of them, as above indicated, although the Bill of Complaint in above-identified suit No. 3, states that respondent has

"the right to commence and to prosecute actions at law and suits in equity against infringers of the said Boker patent and to make recoveries for infringement of said Letters Patent"

Annexed hereto as **Appendix I** we have reproduced paragraph 4 from an agreement dated December 11, 1934 between respondent and Min-A-Max Company which constitutes Defendant's Exhibit 38 in the record of Min-A-Max suit No. 6 above, and shows just what the respondent's position is in these "Min-A-Max" suits.

Respondent's attorneys and counsel, Messrs. Williams, Bradbury, McCaleb & Hinkle, are the attorneys in active charge of each of these nine "Min-A-Max suits". Respondent's "lawyer-expert", Mr. Lynn A. Williams, Jr., has also given "expert testimony" in each of the "Min-A-Max suits" which have gone to trial.*

*Only suits numbered 3, 5 and 6 above have gone to trial, so far as we know.

While respondent may contend in the case at bar that petitioner's herein accused grease-cups have no other purpose than to be used with respondent's couplers (assertedly made by respondent under its Butler patent in suit), yet respondent is, at the same time, engaged in a nation-wide campaign of patent litigation on many other patents owned or controlled by respondent, each based upon some alleged improvement in the construction, form or mechanism of a grease-delivery coupler (or nozzle or connector device), but each again claiming the assertedly improved coupler (or nozzle) in so-called "*combination*" with an old grease-cup.

In respondent's vast campaign of patent litigation on these many other so-called "*combination*" patents, respondent is accusing the same old grease-cups as being, in turn, the grease-cups of each of these many other patents.

Thus, as the date of expiration of respondent's many so-called "*combination*" patents varies over a wide range, respondent is actually bidding for a perpetual monopoly of old grease-cups, so long as some real or imaginary improvement can be made in grease-delivery couplers or nozzles which can be pushed up against or hooked onto an old grease-cup.

Many of these suits have not been contested or only inadequately contested. Some have been contested, as will be more fully pointed out hereinbelow.

Respondent's Manzel Suits and Zerk Suits.

In addition to the "Min-A-Max suits" hereinabove referred to, in which the *conjoint use* of petitioner's grease-cup *with* petitioner's nozzle is charged to constitute the infringement, respondent is also, in other litigation, charging that the **same** grease-cups* constitute the grease-cups of

*or similar headed grease-cups of its own manufacture.

still other of its many so-called "combination" patents with which it has harassed the industry for the past 20 years. Thus, the same headed grease-cup (or "nipple") as involved in the case at bar, or the similar but headless "nipple" of its Zerk patent No. 1,475,980 (R pp 546-555), has also been asserted by respondent to be the grease-cup or "nipple" of its still earlier Manzel patent No. 1,459,662, in its recent suits against Rogers and Universal in the Western District of Pennsylvania, in which suits the decision is reported at 15 F. Supp. 410.* In these suits of Stewart-Warner v. Universal and Rogers, respondent's

*The same Manzel patent has also been litigated in each of the following suits:—

Stewart-Warner Corp. v. Air Scale Co. D. C. N. D. Ohio Eq. 1432;

Stewart-Warner Corp. v. Scharoun et al D. C. N. D. N. Y. Eq. 2856;

Stewart-Warner Corp. v. G. C. Smith D. C. S. D. Calif. Eq. 843-S;

Bassick Mfg. Co. v. Allyne-Zerk Co. D. C. N. D. Ohio, E. Div. Eq. 859;

Bassick Mfg. Co. v. Peerless D. C. N. D. Ohio, E. Div. Eq. 1275. Decision reported at 18 Fed. 2, 29;

Bassick Mfg. Co. v. Lyman Mfg. Co. D. C. N. D. Ohio, E. Div. Eq. 1000. Decision reported at 18 Fed. 2, 29;

Bassick Mfg. Co. v. O. K. Mfg. Co. C. C. A. 6th. Decision reported at 18 Fed. 2, 29;

Bassick Mfg. Co. v. Larkin C. C. A. 6th. Decision reported at 18 Fed. 2, 29;

Bassick Mfg. Co. v. Wag's Auto Accessories C. C. A. 6th. Decision reported at 18 Fed. 2, 29;

Bassick Mfg. Co. v. Riggs Tire Co. C. C. A. 6th. Decision reported at 18 Fed. 2, 29;

Alemite v. P. J. Polisch et al D. C. S. D. Calif. Eq. R-15H;

Alemite et al v. D. L. Yant et al D. C. S. D. Calif. Eq. EY-21-J;

Alemite v. Globe Sales Co. et al D. C. Minn. Eq. 2608.

Manzel patent was held **invalid** on the authority of this Court's decision in the Rogers v. Alemite case (298 U. S. 415) because the claim of the Manzel patent is also drawn to a so-called "combination" of an assertedly improved grease-delivery coupler or nozzle with an admittedly old grease-cup and old pump, and was also being asserted in an effort to monopolize, inter alia, *the use* of an old pump and an old grease-cup. It is in this same suit that the Butler patent here in suit was also held **invalid** for the same reason.

Likewise, respondent's own headed grease-cup (or "nipple"), asserted in the case at bar to be the "nipple" of the Butler patent here in suit, is also asserted by respondent to be the grease-cup or lubricant-receiving element of the claims of its earlier Zerk patent No. 1,475,980 (R pp 546-555), in respondent's said suits against Rogers and Universal, in the Western District of Pennsylvania, in which the decision is reported at 15 F. Supp. 410. In these suits, respondent's Zerk Patent was also held **invalid** on the authority of this Court's decision in the Rogers v. Alemite case (298 U. S. 415) because the claim of the Zerk patent is drawn to a so-called "combination" of an assertedly improved grease-delivery nozzle with an admittedly old grease-cup and old pump, and was also being asserted in an effort to monopolize, inter alia, *the use* of an old pump and an old grease-cup.

This Zerk patent has also been widely litigated by respondent and its wholly-owned predecessor.

Respondent's Morris Suits.

Likewise, headed grease-cups (or so-called "nipples") identical with petitioner's and respondent's headed grease-cups or "nipples" (asserted in the case at bar to be the "nipples" of the Butler patent), are also asserted to be the

grease-cups (or "nipples") of respondent's Morris reissue patent 18,278 (R pp 677-693) in at least four other suits:

Stewart-Warner & Lubrication Corp. v. Service et al
Equity No. 605, U. S. D. C., N. D. Ind., Hammond
Div.

Stewart-Warner & Lubrication Corp. v. Service et al,
Equity No. 15,536, U. S. D. C., N. D. Ill., E. Div.

Stewart-Warner & Lubrication Corp. v. J & R Motor
Supply, Equity No. 4957, U. S. D. C., E. D. Wisc.

Stewart-Warner & Lubrication Corp. v. Universal Lub.
Syst. Inc., Equity No. 3353, U. S. D. C., W. Dist. Pa.

The Morris Reissue patent 18,278 (R 677), just like the Butler patent here in suit, also claims the so-called "*combination*" of an assertedly improved grease-delivery nozzle or coupler with an old headed grease-cup or "nipple" generically recited in the claim. The Morris reissue patent 18,278 (R. p. 677), while having an effective patent date of April 29, 1930 (and was issued originally about four years after the issue of the Butler patent) claims an effective filing date of August 7th, 1916 (seven years earlier than Butler's filing date).

Jacques Suits, Sponsored by Respondent.

Respondent has also caused * to be asserted against petitioner's herein accused grease-cup (or so-called "fitting" or "nipple") an earlier patent No. 1,383,306 to one Raynaldo P. Jacques, which, like the Butler patent in suit and like respondent's earlier Gullborg patent, is based upon

* The fact that respondent sponsors the Jacques suits is clear from Judge Schoonmaker's opinion in Jacques v. Universal, as well as Finding No. 3 adopted by Judge Schoonmaker. These are reproduced at pages 2a and 6a herein.

an asserted improvement in the internal construction or mechanism of a coupler, but claims the assertedly improved coupler in so-called "*combination*" with the **same** old headed grease-cup generically included in the patent claims. The three suits in which respondent caused the Jacques patent to be asserted against the **same** grease-cup and upon the **same** theory of "*contributory*" infringement as involved in the case at bar, are:—

Raynaldo P. Jacques v. Lincoln Engineering Co.,
Equity No. 11,334, U. S. Dist. Court, E. Dist. Mo.,
E. Div.

Raynaldo P. Jacques v. Universal Lubricating Systems Inc.,
Equity No. 3043, U. S. Dist. Court, W. Dist. Penna.

Raynaldo P. Jacques v. General Motors Corp., Equity
No. 6808, U. S. Dist. Court, E. Dist. Mich., S. Div.

Only the first two of these suits has so far been determined in the lower courts, and only in the Universal case did the Court hand down an opinion.

In the above Universal suit sponsored by respondent, the United States District Court for the Western District of Pennsylvania held that the Jacques patent 1,383,306 (levelled at an identical grease-cup and upon the same theory of "*contributory*" infringement as is involved in the case at bar) is also controlled by this Court's decision in **Rogers v. Alemite** (298 U. S. 415). In **Appendix II** hereto, we have reproduced the recent (February 4, 1938) and yet unpublished opinion of the United States District Court for the Western District of Pennsylvania in said suit of Jacques v. Universal sponsored by the respondent, together with the findings of fact and conclusions of law adopted by the District Court in that case. A copy of the Jacques patent is

found on pages 715 to 718 inclusive of the Transcript of Record herein, with the peripherally grooved or "headed" grease-cup or lubricant-receiving "fitting" or "nipple" colored blue, and with the corresponding part of the claim-language also underscored in blue.

Thus, while respondent has urged in the case at bar that petitioner's otherwise **old** grease-cup is the grease-cup of the Butler patent because *usable* with couplers made by respondent (assertedly under its Butler patent), respondent is, at the same time, maintaining in other suits under other of its "*combination patents*", that the **same** and other similar grease-cups **are** the grease-cups of these **other** "*combination patents*" because *usable* with the couplers or nozzles of these **other** "*combination patents*."

Respondent thus clearly recognizes and publicly asserts that the headed grease-cup is a device having other *uses* **not** complained of herein, and is of wide and general application, and *is used* with grease-delivery nozzles or couplers **other than** the coupler made by respondent assertedly under the Butler patent in suit.

CONCLUSION.

In view of the above and for the reasons stated more at length in our main brief, we pray that the decision and judgment of the Circuit Court of Appeals for the Seventh Circuit be reversed.

Respectfully submitted,

LEONARD L. KALISH,

DELOS G. HAYNES,

LLOYD R. KOENIG,

Counsel for Petitioner.

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PAGE

APPENDIXES

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PAGE

APPENDIX I.

Paragraph 4 from agreement dated December 11th, 1934
between

Stewart-Warner Corporation and Min-A-Max Co.

The agreement is Defendant's Exhibit 38

in the case of

Min-A-Max versus Sundholm, Eq. No. 437

in the Western District of Iowa, Western Division

which is referred to on page 27 of the foregoing brief:

4.

"It is understood and agreed that STEWART-WARNER shall have the right, at its own election, to commence and to prosecute actions at law and/or suits in equity against infringers of any of the said Min-A-Max Patents, provided, however, that the entire expense of any such litigation shall be borne by STEWART-WARNER, and that the recoveries in any such litigation shall inure to the benefit of STEWART-WARNER, and MIN-A-MAX agrees that STEWART-WARNER may commence and prosecute any and all such litigation in the name of MIN-A-MAX, or in the name of MIN-A-MAX jointly with STEWART-WARNER, and MIN-A-MAX hereby appoints the solicitors and counsel selected by STEWART-WARNER for the purposes of any and all such litigation, as its solicitors and counsel therefor. MIN-A-MAX shall have the right to employ counsel at its own expense to defend or otherwise protect the interests of MIN-A-MAX in any suit brought by MIN-A-MAX or STEWART-WARNER hereunder STEWART-WARNER agrees to hold MIN-A-MAX free and harmless of any damage the subject of a judgment on a counterclaim asserted against MIN-A-MAX except where such damage is based upon misconduct of MIN-A-MAX."

APPENDIX II.

DISTRIST COURT OF THE UNITED STATES,
WESTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY. No. 3043.

RAYNALDO P. JACQUES,

VS.

UNIVERSAL LUBRICATING SYSTEMS, INC.

OPINION.

(Filed February 4, 1938.)

SCHOONMAKER, Judge:

This is a patent-suit involving Jacques Patent No. 1,383,306 for a connecting device particularly designed for the connecting of a grease-gun to a grease-cup in the lubricating of automobiles. The two claims of the patent are in suit. They are as follows:

"1. A connector for lubricating apparatus having, in combination, a nipple with a recessed outer surface, a nozzle having radially movable locking elements co-acting with said recessed nipple, an outer locking sleeve covering said elements in all positions, said sleeve being slidable on said nozzle and having a recess receiving portions of said locking elements when said sleeve is removed from locking position, and a spring effective to hold said sleeve yieldingly in locking position.

"2. A connector for lubricating apparatus having, in combination, a nipple having a recessed outer surface, a nozzle having radially movable locking elements co-acting with said recessed nipple and manual releasing

means normally holding said elements in locking position, said nozzle having a spring pressed plunger with an axially extending passage therethrough for the lubricant and having a conical outer end yieldingly engaging the edge of the axial opening in the nipple and forming a tight connection therewith."

The charge of infringement is that: (1) The defendant has manufactured and sold the entire connector of the patent in suit, namely, both the coupler and the nipple; and (2) the defendant has contributorily infringed the patent by manufacturing and selling nipples of the kind specified in the patent, and defined in its claims and adapted and intended to be used with the Alemite Hydraulic couplers of the Stewart-Warner Corporation, which form with said nipples the connector covered by the claim of the patent in suit.

So far as concerns the charge of contributory infringement, we have precisely the same case of a lubricating device as was presented to this court in the cases of Stewart-Warner Corporation v. Rogers, No. 2983 Equity; and Stewart-Warner Corporation v. Universal Lubricating Systems, Inc. (the same defendant as in the instant suit), No. 3041 Equity, reported in 15 Fed. Supp. 410, where we held the combination claims of the patents there in suit invalid, because the patentees were merely claiming an old combination whose construction and operation are not changed merely by substituting an improved element in the combination for an old element. In this ruling we relied on the decision of the Supreme Court involving a combination of the same elements for lubricating automobiles as that involved in the instant suit: *Bassick v. Hollingshead Co.*, 298 U. S. 415. Relying on these cases, we hold that the defendant has not contributorily infringed the patent in suit.

In this connection, we should note that, although Jacques is the nominal plaintiff in the instant suit, the Stewart-Warner Corporation, the plaintiff in the two suits heretofore decided by the court and reported at No. 15 F. Supp. 410, is the real party in interest in the instant suit by virtue of a patent contract with Jacques (Plff Ex. 7), whereby it controls this suit and holds an exclusive license under the patent in suit, which it may exercise at any time on the payment of \$10.00.

On the charge of direct infringement, the plaintiff fails to make out a case, because neither the Stewart-Warner couplers upon which the suit was founded, nor the defendants' coupler, which was placed before the court by stipulation of counsel, embody the outer slidable manually operable locking sleeve of the Jacques patent in suit. Not only is the construction different, but the mode of operation of the couplers is different. The Jacques coupler may be detached from the grease-cup only by manipulating manually the locking of the outer slidable-locking sleeve, while the Stewart-Warner coupler and the defendant's coupler can be attached to, and detached from the grease-cup without touching the coupler at all, by merely pushing the grease-delivery conduit or pipe of the pump. Then, too, the outer locking sleeve of the Jacques coupler actually locks the coupler, while in the Stewart-Warner's and defendant's coupler, there is no such locking at any time, as the coupler can be detached from the grease-cup by a slight angularity.

In addition to that, we are of the opinion there is no novelty even in the coupler element over the prior art.

Claim 1 of the patent distinguishes from the Ferguson Patent No. 1,324,654 only in reciting that the locking sleeve covers the balls in the structure in all positions. This is a mere arbitrary selection of the direction of movement of the locking sleeve and does not disclose invention.

The Stichler Patents Nos. 1,242,490 and 1,337,288; the Sutton Patent No. 978,957; the Newton Patent No. 1,118,876; and the McMullin Patent No. 1,340,785, all show multi-jawed chuck-type hose couplers, in which the jaws are never exposed.

The Schmidt Patent No. 1,061,410; Reiness Patent 836,534; Reiness Patent No. 883,422; Bodor Patent No. 1,002,632; Aldridge Patent No. 1,019,938; Sheppard Patent No. 1,053,883; Fischer Patents Nos. 1,089,755 and Reissue 13,009; and the Fassett Patent No. 1,118,518, likewise show multi-jawed chuck-type construction with the external ball-actuating sleeve or the external locking sleeve.

Claim 2 of the patent in suit is invalid, because the coupler construction defined therein is readable upon each of the couplers of each of the two Stichler patents of the Doman patent and of the Paul patent, and does not involve invention over them.

We adopt as our findings of fact and conclusions of law those proposed by the defendant and marked filed therein on December 20, 1937. Appropriate decree in accordance therewith may be submitted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(Filed December 20, 1937.)

This cause having been tried at final hearing, defendant now, in accordance with the directions of the Court, herewith submits its proposed Findings of Fact and Conclusions of Law, and requests the same.

FINDINGS OF FACT.

1) Plaintiff, Raynaldo P. Jacques, is a citizen of the United States and State of Rhode Island and is a resident of Woonsocket, Rhode Island.

2) Defendant, Universal Lubricating Systems, Inc., is a Delaware corporation, a citizen of Delaware, and has its principal place of business at Oakmont, Pennsylvania within the Western District of Pennsylvania.

3) Plaintiff, Raynaldo P. Jacques, is vested with the legal title to patent No. 1,383,306, in suit, issued to him on July 5th, 1921, on an application filed August 23rd, 1920, subject to a certain "PATENT CONTRACT" (Plaintiff's Exhibit "7") dated February 16th, 1935, between the plaintiff and the Stewart-Warner Corporation, a Virginia corporation, having its principal place of business at Chicago, Illinois,

under which the Stewart-Warner Corporation paid plaintiff the sum of \$20,000 for an irrevocable and perpetual option for a certain "EXCLUSIVE LICENSE" (Plaintiff's Exhibit "6") under the patent in suit (which license would be subject, however, to one other outstanding non-exclusive license to manufacture and sell under said patent), and under which plaintiff contracted with the Stewart-Warner Corporation (in further consideration of

the aforesaid sum of \$20,000.00) to bring a patent infringement suit under the patent here in suit charging contributory infringement against headed grease-cups or so-called lubricant-receiving "fittings" or "nipples" like the defendant's herein accused headed grease-cups or "fittings" or "nipples";—said charge of contributory infringement to be based upon the contention that said headed grease-cups or lubricant-receiving "fittings" or "nipples" constituted contributory infringement of the patent in suit because adapted and intended for use with multi-jawed "chuck" type grease-delivery hose-couplers of the kind manufactured and sold by the Stewart-Warner Corporation and sometimes referred to in the trade as the "Alemite Hydraulic" couplers, and

under which the Stewart-Warner Corporation agreed further to pay additional and substantial sums in the event that the patent in suit was adjudicated as valid and contributorily infringed by the manufacture, sale and use of headed grease-cups or so-called "fittings" or "nipples," manufactured and sold by the defendant with knowledge and intent that they were to be used in conjunction with the said "Alemite Hydraulic" couplers, or with other couplers of the form and character such that no other or different question of infringement was involved, which additional sum varied in amount in accordance with the charge and character of such adjudication.

The present suit is in pursuance of said "PATENT CONTRACT" (Plaintiff's Exhibit "7") of February 16th, 1935, between plaintiff and the Stewart-Warner Corpora-

tion, and particularly in pursuance of plaintiff's obligation under paragraph numbered "1" of said Contract.

4) The defendant in the present suit is the same corporation as the corporate defendant in Equity suit No. 3041 in this Court, entitled "Stewart-Warner Corporation v. Universal Lubricating Systems, Inc., et al." (in which decision is reported at 15 F. Supp. 410).

5) The Stewart-Warner Corporation referred to in the foregoing Finding numbered "3" is the same corporation which is the plaintiff in Equity suit No. 3041 mentioned in the foregoing Finding numbered "4."

6) The principal charge of infringement* specified by the Bill of Complaint and by plaintiff's Bill of Particulars subsequently filed herein on May 20th, 1935, is that the manufacture and sale by defendant of its headed grease-cups or so-called lubricant-receiving "fittings" or "nipples," constitutes contributory infringement of each of the claims of the Jacques patent No. 1,383,306 in suit, because adapted and intended for use with the two different kinds of multi-jawed "chuck" type grease-delivery hose-couplers manufactured and sold by the Stewart-Warner Corporation and which two different kinds of "Alemite Hydraulic" couplers are designated respectively as the "single-seal" and as the "double-seal" couplers—said two different kinds of "Alemite Hydraulic" couplers being both shown in the drawing of Plaintiff's Exhibit "2", and the single-seal "Alemite Hydraulic" coupler being further shown separately in Defendant's Exhibit "97", and the double-seal "Alemite Hydraulic" coupler being further shown separately in Defendant's Exhibit "98."

* Infringement charges "A" and "B" set out in Finding of Fact 30, *infra*.

7) The defendant's headed grease-cup or so-called lubricant-receiving "fitting" or "nipple", charged in the present suit to constitute contributory infringement of Jacques patent No. 1,383,306 in the manner set forth in foregoing Finding numbered "6", is precisely the same headed grease-cup or so-called lubricant-receiving "fitting" or "nipple" which in the aforementioned earlier Equity suit No. 3041 in this Court was similarly charged to constitute contributory infringement of Butler patent No. 1,593,791.

8) The Alemite single-seal "Hydraulic" coupler and the Alemite double-seal "Hydraulic" coupler (of Stewart-Warner manufacture), with which defendant's herein accused headed grease-cup or so-called lubricant-receiving "fitting" or "nipple" is charged contributorily to infringe, are precisely the same Stewart-Warner couplers with which the defendant's accused headed grease-cup or "fitting" or "nipple" was charged contributorily to infringe Butler patent No. 1,593,791 in the aforementioned earlier Equity suit No. 3041 in this Court.

9) The Alemite double-seal "Hydraulic" coupler^b was not placed on the market by the Stewart-Warner Corporation until some time after defendant had placed on the market its herein accused headed grease-cups or so-called lubricant-fitting "fittings" or "nipples".

10) Subsequent to the filing of the Bill of Complaint in the present suit, defendant also placed on the market and sold a multi-jawed "chuck" type grease-delivery hose-coupler of its own manufacture, as shown in the drawing of

^b involved in infringement-charge "B" in Finding 30, *infra*.

Plaintiff's Exhibit "3" and also as shown in the drawing of Defendant's Exhibit "99".

11) At the trial, it was stipulated by and between counsel for the respective parties that the Court may also determine whether the manufacture and sale of defendant's own multi-jawed "chuck" type grease-delivery hose-coupler shown in Plaintiff's Exhibit "3" and shown in Defendant's Exhibit "99" constituted direct infringement of the Jacques patent No. 1,383,306 when sold with or sold for use with defendant's own herein-accused headed grease-cups or lubricant-receiving "fittings" or "nipples",^{c)} and whether it constituted contributory infringement when sold for use with or when intended for use with the headed grease-cups or lubricant-receiving "fittings" or "nipples" of Stewart-Warner's manufacture.^{d)}

12) The patent in suit relates to conduit couplers or hose-couplers of the quick-attachable-and-defachable type: which the patentee explains in lines 9 and 10 of page 1 of the patent specification is "capable of general application", but was particularly designed by the patentee "for connecting a grease-gun to a grease-cup".

13) The patent in suit discloses the old combination of:

1) a grease-cup (or lubricant-receiving "fitting" or "nipple"),

and

2) a hose-coupler (or conduit coupler)

and

3) a grease-delivery pump or so-called "grease-gun".

^{c)} constituting infringement-charge "C" in Finding 30, *infra*.

^{d)} constituting infringement-charge "D" in Finding 30, *infra*.

14) The alleged improvement, if any, of the patent in suit, is in the mechanism or construction or structural characteristics of the particular coupler disclosed in the patent in suit.

The construction and operation of the old combination of:—(a) nipple; (b) coupler; is otherwise unchanged:—that is, the combination is not changed otherwise than by a change in the coupler.

15) Instead of just claiming his allegedly improved hose-coupler, per se, (or merely the combination of those elements which constitute the allegedly improved hose-coupler, per se), the patentee claims the combination of his allegedly improved hose-coupler (specifically defined) with the old grease-cup or so-called lubricant-receiving "fitting" or "nipple", which latter is included in the claims in generic and all-inclusive language not distinguishing it from the prior-art "nipples".

16) It was old prior to Jacques to use "headed" or peripherally-grooved grease-cups or so-called lubricant-receiving "fittings" or "nipples", affixed to the various bearings of automobiles and other machinery (industrial machinery, farming machinery, etc.) into which lubricant was adapted and intended to be supplied by any suitable lubricant-dispensing pump or compressor or so-called "grease-gun", on the discharge end of which (or on the discharge hose of which) a suitable hose-coupler was provided for the temporary quick-attachable and quick-detachable connection of the lubricant-dispensing pump or "grease-gun" to any of the several grease-cups or lubricant-receiving "fittings" or "nipples".

17) The combination of

1) a peripherally-grooved or "headed" grease-cup (or so-called "fitting" or "nipple")

and

2) a groove-engaging or head-engaging hose-coupler

and

3) a lubricant-dispensing pump or compressor or so-called "grease-gun"

is disclosed in each of the following prior-art patents:

Davis & Jaeschke, 1,150,420, Aug. 17, 1915, (Def's Exh 123);

Seng Re 15,632, June 19, 1923, (Def's Exh 106) (Original Application filed Dec. 23, 1915);

Morris Re 18,278, December 8, 1931, (Def's Exh 146) (Original Application filed Aug. 7, 1916);

Morris 1,962,254, June 12, 1934, (Def's Exh 145) (Original Application filed Aug. 7, 1916);

Fesler 1,315,484, Sept. 9, 1919, (Def's Exh 127);

Winkley Re 14,667, June 10, 1919, (Def's Exh 130) (Original Application filed Oct. 17, 1916);

Martin 1,369,687, Feb. 22, 1921, (Def's Exh 129) (Original Application filed Oct. 4, 1919).

18) It was old prior to Jacques to use head-engaging or groove-engaging hose-couplers

a) both of the fixed-jaw type, as in the Winkley patent Re 14,667 (Def's Exh 130) and in the Morris patents Re 18,278 and 1,962,254 (Def's Exh 145 and 146)

which were applied to "headed or peripherally-grooved grease-cups, ("fittings" or "nipples") by a transverse

movement (that is transversely to the axis of the grease-cup and coupler)

as well as of the movable-jaw type, as that of the Davis & Jaeschke patent 1,150,420 (Def's Exh 123); Seng patent Re 15,632 (Def's Exh 106); Fesler patent 1,315,484 (Def's Exh 127); and Martin patent 1,369,687 (Def's Exh 129)

in which a plurality of radially-movable jaws are provided in the hose-coupler, which jaws are adapted to move inwardly in a radial direction to engage the "head" or groove of the grease-cup or "nipple", and which movable-jawed couplers are applied to the "headed" or grooved grease-cups or "fittings" or "nipples" in a generally axial direction, that is by moving the couplers bodily onto the grease-cup in a generally axial direction.

19) Couplers having a plurality of radially-movable jaws for engaging a peripheral-groove or "head" of some other member to which they are to be connected, were also generally applied as conduit couplers or hose-couplers, prior to Jacques, as shown in the following patents:

Ferguson Patent 1,324,654, Dec. 9, 1919 (Def's Exh 127);

Newton Patent 1,118,876, Nov. 24, 1914 (Def's Exh 122);

Stichler Patent 1,242,490, Oct. 9, 1917 (Def's Exh 112);

Stichler Patent 1,337,288, Apr. 20, 1920 (Def's Exh 131);

Paul Patent 621,276, Mar. 14, 1899 (Def's Exh 118);

Ulleland Patent 1,253,309, Jan. 15, 1918 (Def's Exh 129);

Nielsen Patent 1,001,069, Aug. 22, 1911 (Def's Exh 121);

McMullin Patent 1,340,785, May 18, 1920 (Def's Exh 128);

Doman Patent 455,180, June 30, 1891 (Def's Exh 117);

Sutton Patent 978,957, Dec. 20, 1910 (Def's Exh 119).

20) Jacques' allegedly improved coupler is set forth in the claims as being composed of the following elements:—

In Claim 1:

“a nozzle having radially movable locking elements co-acting with said recessed nipple, an outer locking sleeve covering said elements in all positions, said sleeve being slidable on said nozzle and having a recess receiving portions of said locking elements when said sleeve is removed from locking position, and a spring effective to hold said sleeve yieldingly in locking position.”

In Claim 2:

“a nozzle having radially movable locking elements co-acting with said recessed nipple and manual releasing means normally holding said elements in locking position, said nozzle having a spring pressed plunger with an axially extending passage therethrough for the lubricant and having a conical outer end yieldingly engaging the edge of the axial opening in the nipple and forming a tight connection therewith.”

21) Jacques' allegedly improved hose-coupler is composed of:—

a) a tubular body member or portion designated in the specification as “the nozzle 11”.

(the body portion or “nozzle 11” is composed of two portions 17 and 18 threadedly secured

to each other and is secured to and forms an extension of the grease-hose 16.)

This is the "nozzle" in each of claims 1 and 2.

- b) radially movable "locking balls 20".

This is defined in each of the claims as "radially movable locking elements", with the further functional or explanatory statement in the claims that these locking elements are intended for "co-acting with" the grease-cups or "nipples" (whenever the coupler is attached to a grease-cup or "nipple").

- c) an outer slidable locking sleeve 21, mounted outside "the sleeve 18" which forms a part of the nozzle 11.

This is defined in claim 1 as "an outer locking sleeve covering said elements in all positions, said sleeve being slidable on said nozzle and having a recess receiving portions of said locking elements when said sleeve is removed from locking position" and is defined in claim 2 as "manual releasing means normally holding said elements in locking position."

- d) a spring 22 for yieldably moving the locking sleeve 21 in one direction.

This is defined in claim 1 as "a spring effective to hold said sleeve yieldingly in locking position", and is absent from claim 2.

- e) a sealing plunger 25, having a convexly conical tip, within and slidable in the body or nozzle 11 (that is, within the portions 17 and 18 composing the nozzle

11) and a spring 28 urging said sealing plunger towards the open end of the coupler.

This is absent from claim 1, but is included in claim 2 as "a spring-pressed plunger with an axially extending passage therethrough for the lubricant, and having a conical outer end." Claim 2 also includes the functional explanatory statement that the conical outer end is for "yieldingly engaging the edge of the axial opening" of the grease-cup or "nipple" and for "forming a tight connection therewith" whenever the coupler is connected on to a grease-cup.

22) The feature of claim 1, that the outer locking sleeve covers the radially movable locking elements "in all positions" and that said locking sleeve has "a recess receiving portions of said locking elements when said sleeve is removed from locking position", is not included either in the statement of the invention contained in the specification of the patent in suit, nor is there any mention of it anywhere in the specification of the patent in suit, nor was it included as a feature of Jacques' coupler invention in any of the original claims filed with and forming part of his application as originally filed. This feature was first included in the application (Defendant's Exhibit 94) by amendment filed February 12, 1921, through which claim 1 of the patent was first submitted, without any supplemental oath of the applicant Raynaldo P. Jacques.

23) The feature of claim 1, that the outer locking sleeve covers the radially movable locking elements "in all positions" and that said locking sleeve has "a recess receiving portions of said locking elements when said sleeve is re-

moved from locking position", merely goes to the direction of movement of Jacques' outer locking sleeve 21; there being two possible directions of axial movement, both for the locking movement as well as for the unlocking movement. This feature of claim 1 merely represents a statement that Jacques has selected the motion of the sleeve toward the free end of the coupler to unlock, and the motion of the sleeve away from the free end of the coupler to lock.

24) It was old prior to Jacques to provide in multi-jawed "chuck" type couplers, a plurality of radially movable locking jaws "covered" by an outer locking sleeve "in all positions" and in which the outer locking sleeve has a "recess receiving portions of said locking elements when said sleeve is removed from locking position". This reversal of the movement of the outer locking sleeve in relation to the locking balls or elements is shown in the Stichler patents Nos. 1,242,490 and 1,337,288; in the Newton patent No. 1,118,876; in the McMullin patent No. 1,340,785; and in the Sutton patent No. 978,957.

25) The choice of moving the locking sleeve in one direction or in the other direction to lock or unlock, is merely an arbitrary choice between two equally old and well-known ways of moving the locking sleeve.

26) The structure defined in claim 1 is fully disclosed in Ferguson patent No. 1,324,654, except for the feature that the outer locking sleeve covers the radially movable locking elements "in all positions" and that said locking sleeve has "a recess receiving portions of said locking elements when said sleeve is removed from locking position"; which feature was old in the multi-jawed "chuck" type hose-couplers of Stichler patents Nos. 1,242,490 and 1,337,-

288; Newton patent No. 1,118,876; McMullin patent No. 1,340,785, and Sutton patent No. 978,957.

27) It involved nothing more than mere mechanical skill to reverse the direction of movement of the locking sleeve 22 of the Ferguson patent No. 1,324,654.

28) The coupler part of claim 1, reading "a nozzle having radially movable locking elements * * * , an outer locking sleeve covering said elements in all positions, said sleeve being slidable on said nozzle and having a recess receiving portions of said locking elements when said sleeve is removed from locking position, and a spring effective to hold said sleeve yieldingly in locking position", is fully readable upon the couplers of each of the Stichler patents Nos. 1,242,490 and 1,337,288.

29) The coupler part of claim 2, reading "a nozzle having radially movable locking elements * * * and manual releasing means normally holding said elements in locking position, said nozzle having a spring-pressed plunger with an axially extending passage therethrough for the lubricant and having a conical outer end yieldingly engaging the edge of the axial opening in the nipple (or the other coupled member) and forming a tight connection therewith", is fully readable upon the Stichler patent No. 1,242,490, while the patent to Paul, No. 621,276, and the patent to Ulloland, No. 1,253,309, fully responds to the coupler language of claim 2, except for the reversal of the conical surface onto the "nipple" device.

30) The claims of the patent in suit are not readable upon, nor found in, the assemblage of equipment variously charged to infringe,* to wit:

- | | | | |
|---|--|------|---|
| A | defendant's "headed" grease-cup or so-called "fitting" or "nipple" | plus | Stewart - Warner's "single-seal" Ale-mite Hydraulic coupler |
| B | defendant's "headed" grease-cup or so-called "fitting" or "nipple" | plus | Stewart - Warner's "double-seal" Ale-mite Hydraulic coupler |
| C | defendant's "headed" grease-cup or so-called "fitting" or "nipple" | plus | Defendant's "Hook-on" coupler |
| D | Stewart-Warner's "headed" grease-cup or so-called "fitting" or "nipple", designated in Stewart-Warner's trade as the "Hydraulic fitting" | plus | Defendant's "Hook-on" coupler |

because neither one of the two Stewart-Warner couplers, involved in infringement-charges A & B, nor the defendant's coupler, involved in infringement-charges C & D, includes "an outer locking sleeve * * * slidable on said nozzle", as required by claim 1 in suit, or "manual releasing means normally holding said elements in locking position", as required by claim 2 in suit, and because none of said couplers include a "conical outer end" on a sealing plunger, as required by claim 2 in suit.

* infringement-charges A and B were the sole basis for the Bill of Complaint, as set forth in foregoing Finding 6.

infringement-charges C and D are predicated on a defendant's coupler subsequent to the Bill of Complaint, as set forth in foregoing Finding 10, and infringement-charges C and D are before the Court solely by virtue of stipulation of Counsel, as set forth in Finding 11.

CONCLUSIONS OF LAW.

1. Plaintiff is sufficiently vested with the legal title to the patent in suit to stand alone as the party plaintiff in this suit.

2. The patent in suit is prima facie not infringed because each of the couplers relied upon by plaintiff on its several charges of infringement, set forth in Finding of Fact numbered "30", lacks the outer manually slidable locking sleeve of the Jacques coupler, which locking sleeve is variously defined in each of the claims in suit, and because each of the couplers relied upon by plaintiff on its several charges of infringement lacks a plunger with a conical outer end, as required by claim 2 in suit.

3. The prima facie non-infringement, appearing from the face of the patent in suit, and from a comparison of the claims of the patent in suit with the devices charged to infringe, entitles defendant to a dismissal of the Bill of Complaint without reference to any of the evidence adduced at the trial.

4. Plaintiff's charge of infringement, directed against defendant's accused "headed" grease-cup or so-called "fitting" or "nipple", must also fail under the ruling of the United States Supreme Court upon the combination claims 1 to 6 and 8 & 10 of Gullborg Patent 1,307,734, in *Rogers v. Alemite Corporation*, 298 U. S. 415, because plaintiff may not have a monopoly of old "headed" or peripherally-grooved grease-cups, "fittings" or "nipples", which may be used with couplers assertedly embodying the alleged coupler improvement of the patent in suit.

5. Each of the claims of the patent in suit must be held invalid under the ruling of the United States Supreme Court upon the combinations claims 1 to 6 and 8 & 10 of

Gullborg Patent 1,307,734, in *Rogers v. Alemite Corporation*, 298 U. S. 415, because claiming (or drawn to) an old and exhausted combination (of "headed" grease-cup and head-engaging coupler), whereas the patentee's invention or contribution, if any, is merely in the internal construction or mechanism of the coupler; and the construction and operation of the combination of grease-cup and coupler is otherwise unchanged; and the patentee is merely claiming an old combination, whose construction and operation is not changed merely by substituting an allegedly improved coupler of this combination for an old coupler.

6. Each of the claims of the patent in suit is invalid because not in accordance with Section 4888 of the Revised Statutes of the United States (U. S. C. Title 35, Sec. 33), in that the patentee has failed to "particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery", and on the contrary, the patentee has, in his patent claims, co-mingled that which was in the public domain (the grease-cup or "nipple") with that which was assertedly improved or invented by him (the coupler).

7. Each of the claims of the patent in suit is invalid because the assertedly improved coupler, purported to be defined therein, was anticipated by the prior art.

8. Each of the claims of the patent in suit is invalid because the assertedly improved coupler, purported to be defined therein, did not involve invention over the prior art.

9. The Bill of Complaint must be dismissed with costs to defendant.